

REPRESENTATIVE FOR PETITIONER:  
Todd A. Leeth, Hoepfner, Wagner & Evans, LLP  
Gerold L. Stout, Hoepfner, Wagner & Evans, LLP

REPRESENTATIVE FOR RESPONDENT:  
Martin R. Lucas, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                              |   |                  |                          |
|------------------------------|---|------------------|--------------------------|
| Porter-Starke Services, Inc. | ) | Petition No.:    | 75-004-15-2-8-00119-16   |
|                              | ) |                  |                          |
| Petitioner,                  | ) | Parcel No.:      | 75-06-26-102-008.000-004 |
|                              | ) |                  |                          |
| v.                           | ) | County:          | Starke                   |
|                              | ) |                  |                          |
| Starke County Assessor,      | ) | Township:        | Center                   |
|                              | ) |                  |                          |
| Respondent.                  | ) | Assessment Year: | 2015                     |

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Appeal from the Final Determination of the  
Starke County Property Tax Assessment Board of Appeals

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**December 7, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**ISSUE**

1. Whether the property under appeal, or a portion thereof, was exempt from property taxation for 2015 because it was owned, occupied, and used by Petitioner for charitable purposes.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### JURISDICTIONAL FRAMEWORK

2. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### PROCEDURAL HISTORY

3. This appeal involves a medical office building located at 1001 Edgewood Drive in Knox.
4. Petitioner filed its Form 136 Application for Property Tax Exemption (“Form 136”) on April 15, 2015, claiming 100% of the subject property should be exempt. On December 8, 2015, the Starke County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Form 120 Notice of Action on Exemption Application (“Form 120”) finding the subject property to be 100% taxable. On January 8, 2016, Petitioner filed its Form 132 Petition for Review of Exemption (“Form 132”) with the Board.

### HEARING FACTS AND OTHER MATTER OF RECORD

5. On August 10, 2016, the Board’s Administrative Law Judge, Ellen Yuhan (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.
6. Attorneys Todd Leeth and Gerold Stout represented Petitioner. Attorney Martin Lucas represented Respondent. The following people were sworn as witnesses and testified:

For Petitioner: Sandra Carlson, Vice President of Clinical Services  
Mary Idstein, Chief Financial Officer

7. Petitioner submitted the following exhibits:

Petitioner's Memorandum  
of Law

|                       |  |
|-----------------------|--|
| Petitioner Exhibit A: | By-Laws of Porter-Starke Services, Inc.  |
| Petitioner Exhibit B: | Community Mental Health Center<br>Certification  |
| Petitioner Exhibit C: | Private Mental Health Institution License  |
| Petitioner Exhibit D: | Requirements for Certification as a Community<br>Mental Health Center                      |
| Petitioner Exhibit E: | Community Health Needs Assessment, Indiana<br>University Health Starke Hospital, 2015-2016 |
| Petitioner Exhibit F: | Letter from Indiana Attorney General Karen M.<br>Freeman-Wilson dated June 14, 2000        |
| Petitioner Exhibit G: | Official Opinion No. 7, Indiana Attorney General,<br>March 27, 1968                        |
| Petitioner Exhibit H: | Financial Assistance Policy, Porter-Starke Services  |
| Petitioner Exhibit I: | Selected statutes cited in the Memorandum of Law   |

8. Respondent did not submit any exhibits.<sup>1</sup>

9. The following additional items are recognized as part of the record:

|                  |                          |
|------------------|--------------------------|
| Board Exhibit A: | Form 132 and attachments |
| Board Exhibit B: | Notice of hearing        |
| Board Exhibit C: | Hearing sign-in sheet    |

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

#### **PETITIONER'S CONTENTIONS**

10. Petitioner is a 501(c)(3) tax exempt non-profit corporation organized under the laws of Indiana. It is certified as a Community Mental Health Center ("CMHC") by the State of Indiana's Family and Social Services Administration pursuant to Ind. Code § 12-21. As a CMHC, Petitioner is required to provide services to mentally ill, chronically addicted,

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<sup>1</sup> Respondent asked that the Board consider the PTABOA's Memorandum of Decision which is included as an attachment to Board Exhibit A.

and emotionally disturbed individuals. Specifically, Petitioner provides those services to children, adolescents, adults, and seniors in Porter County and Starke County. Petitioner provides its services through outpatient care as well as through in-house counseling. They also provide services in jails, schools, and community centers. *Carlson testimony; Pet'r Exs. B-D; Pet'r Memorandum of Law.*

11. For several years, Petitioner operated out of a leased facility in Starke County. In an effort to expand its services, Petitioner purchased the subject property in 2015. The subject property is a medical office building consisting of 8,239 square feet, with the exception of 1,591 square feet that is leased to the Northwest Indiana Eye and Laser Center. Petitioner uses all of its portion of the building to provide its services to the community. Petitioner contends that it has regularly claimed, and has been awarded, exempt status on all of its owned real estate in Porter County. Similarly, Petitioner now contends it is entitled to an exemption on its portion of the subject property in Starke County because it is predominantly owned, occupied, and used for charitable purposes as described by Ind. Code § 6-1.1-10-16. *Carlson testimony; Memorandum of Law.*
12. Petitioner has a full-time medical doctor and psychiatrist on staff who provide clinical oversight and prescribe medication as needed. Petitioner provides case-management services in which personnel visit patients' homes to assist with various life skills that range from improving personal hygiene, learning to effectively communicate, and balancing a budget, among others. They work with the Indiana Department of Child Services, as well as Adult Protective Services, when there are individuals who have been identified as having been abused or neglected. They also provide addiction services to adolescents and adults which Petitioner considers very important because Starke County has been identified as having one of the highest rates of opiate abuse in the state. *Carlson testimony.*
13. In addition to the employees described above, Petitioner also has approximately 20 other employees on staff. Those employees include a nurse, a nurse's assistant, a clinical psychologist, clinical social workers, mental health counselors, marriage and family

therapists, case managers, and administrative support personnel. Petitioner also has several volunteers that assist in performing its services. *Carlson testimony.*

14. Petitioner serves approximately 2,000 patients per year. While many patients regularly recover as a result of Petitioner's services, other patients have been receiving treatment for many years due to the chronic nature of their various illnesses. Petitioner monitors the outcome of its treatment with internal quality assurance reviews. It also monitors treatment results with reports to the state, which is a requirement of maintaining CMHC status. *Carlson testimony.*
15. Petitioner contends that a CMHC must be operated by, or in combination with, a governmental body, hospital, college, university, or a non-profit corporation. Ind. Code § 6-1.1-10-16 provides a real property tax exemption for all of the entities that are permitted to operate as a CMHC. Petitioner contends that it would be implausible that the General Assembly would have intended that a CMHC operated by a non-profit organization should not receive a property tax exemption when it provides the same services as other similar entities. *Leeth argument; Memorandum of Law.*
16. Petitioner contends that it is required to provide outpatient services. Those services consist of day treatment, partial hospitalization, individualized treatment planning, family support services, medication evaluation and monitoring, services to prevent unnecessary and inappropriate treatment and hospitalization, and consultation and education services to the communities within the service area. Petitioner contends it is also required to provide 24 hour emergency care services. *Carlson testimony; Pet'r Ex. D.*
17. Petitioner presented letters from the Indiana Attorney General indicating that a CMHC is a public entity because it is subsidized by state taxes and is not wholly based on a fee for services basis, and is also required to be audited by the Indiana State Board of Accounts. *Leeth argument; Pet'r Exs. F and G.*

18. Petitioner contends that it receives funding from many sources, including funds from the United States Department of Public Health and Welfare as well as direct subsidies from Starke County. Petitioner contends that Starke County is mandated by statute to subsidize or appropriate funds for a CMHC that serves its territory. Any additional funds received from fees charged to patients revert into the facility's operations. Because there is no profit or stakeholder gain, any revenues received, regardless of the source, directly reduce the cost of providing services to the citizens of the regions covered. *See College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). *Idstein testimony; Memorandum of Law; Pet'r Ex. D.*
19. Petitioner also contends that it is one of a few facilities in the state that is part of the Medication Assistance Treatment ("MAT") grant program. The MAT grant is a federal assistance program originating within the Substance Abuse and Mental Health Services Administration, the funds of which are distributed throughout the state to address addiction issues within Indiana. As mentioned, Starke County, among others, has been identified as a high need area for opiate addiction issues. *Carlson testimony.*
20. Petitioner contends that the services it provides essentially constitute welfare. Those services address basic human needs and, if Petitioner wasn't performing them, there would be a significant negative impact and increased burden on the government. That increased burden would include the government directly treating those patients in need of the care provided by Petitioner. Furthermore, there would be increased indirect costs related to other areas such as law enforcement and corrections, among others. *Leeth argument; Memorandum of Law.*
21. Petitioner argues that, in *Trinity Episcopal Church, Health and Hospital Corp. of Marion County, d/b/a/ Midtown Community Mental Health Center v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816 (Ind. Tax Ct. 1998), the facts were undisputed that the work of a CMHC constituted an exempt purpose. *Leeth argument; Memorandum of Law.*
22. Petitioner further argues that Respondent is relying on *Housing Partnerships, Inc. v. Tom Owens, Bartholomew County Assessor*, 10 N.E.3d 1057 (Ind. Tax Ct. 2014) in refusing

the exemption. Petitioner points out that two issues distinguish that case from Petitioner's. First, providing low-income housing is not per se a charitable purpose. However, providing mental health services is a charitable purpose. Second, in that case, the taxpayer failed to provide probative evidence that the property was owned, used, and occupied for an exempt purpose. To distinguish its case, Petitioner notes that it presented probative testimony and other evidence regarding the services being provided to the community, and how those services are being successfully undertaken. *Leeth argument.*

23. Petitioner contends that the law focuses on the subject property being owned, used, and occupied, and not how services are compensated. There is no "predominantly funded" test that Respondent seeks to impose. Petitioner contends that Respondent has added requirements or conditions that are not part of the statute at issue. *Leeth argument; Memorandum of Law.*

24. Finally, Petitioner contends that it is not logical that the General Assembly would provide for state and local funding for a CMHC on one hand, and then require it to return that funding to the government in the form of property taxes on the other hand. *Leeth argument; Memorandum of Law.*

#### **RESPONDENT'S CONTENTIONS**

25. Respondent contends that the subject property should not be exempt. Respondent does not dispute that Petitioner is a 501(c)(3) organization or that it is a CMHC that provides mental health services to the community. However, Respondent contends, the activity of a 501(c)(3) organization is not sufficient in and of itself to meet the burden of proving it is entitled to an Indiana property tax exemption. Respondent contends that Petitioner needs to show that there is a genuine charitable function at hand. *Lucas argument.*

26. Respondent contends that Petitioner receives funding from the county and the state, that Petitioner's employees and patients drive on county roads and use county bridges to get to the subject property, and that children of Petitioner's employees attend schools in the county. Respondent also notes that Petitioner collaborates with the county sheriff's

department regularly in situations where patients might become unruly. *Carlson testimony*.

27. Respondent acknowledges that Petitioner’s argument, in which Petitioner cites *Knox Co. PTABOA v. Grandview Care, Inc.*, 826 N.E.2d, 177 (Ind. Tax Ct. 2005), that the provision of mental health services constitutes the alleviation of suffering and care of the infirm for which the exemption is intended. Respondent acknowledges that under that holding, Petitioner’s application for exemption would exemplify a sound case. However, in the decade since the *Knox Co.* decision, Respondent contends that the health care landscape has changed, as have the legal standards applicable to assertions of charitable exemptions by health care providers. In *Tipton Co. Health Care Foundation, Inc. v. Tipton Co. Assessor*, 961 N.E.2d 1048 (Ind. Tax Ct. 2012), Respondent contends that the court turned from its focus on specific activities when it ruled that “good and noble deeds alone do not satisfy the requirements for a charitable purposes exemption from property taxes.” *Lucas argument; Memorandum of Decision, Bd. Ex. A.*
28. Respondent contends that in *Housing Partnerships*, the court indicated that “more than just good deeds and a non-profit status” are needed to support a charitable exemption. Respondent contends that the court’s decision in that case looked more closely at the compensation received by the taxpayer, finding that the taxpayer was “not relieving a government burden because the government was providing subsidies and financial assistance to them.” *Housing Partnerships* at 1064. In fact, the entity was a contractor performing services for compensation which is, Respondent contends, what Petitioner is doing. Respondent further contends that Petitioner has not demonstrated a present benefit to the general public sufficient to justify the loss of tax revenue in accordance with *Housing Partnerships*. *Lucas argument; Memorandum of Decision, Bd. Ex. A.*

#### ANALYSIS

29. In Indiana, all tangible property is subject to taxation. Ind. Code § 6-1-1-2-1. Nevertheless, Indiana’s legislature has the authority to exempt property from taxation. Ind. Const., Art. 10 §1. The legislature enacted Indiana Code § 6-1.1-10-16(a), which

provides in relevant part that “all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for...charitable purposes.” In addition, the legislature has provided for the exemption of land on which an exempt building is located, and personal property located in an exempt building. Ind. Code § 6-1.1-10-16(c), (e).

30. Because an exemption relieves property from the obligation of bearing its fair share of the cost of government services, exemptions are to be strictly construed against the taxpayer and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). The taxpayer therefore always bears the burden of proving that it is entitled to the exemption it seeks. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
31. In order to prove that a property is used for charitable purposes, a taxpayer must demonstrate that (1) through its use of the property, there is “evidence of relief of human want...manifested by obviously charitable acts different from the everyday purposes and activities of man in general,” and that (2) the charitable institution provides a present benefit to the general public sufficient to justify the loss of tax revenue. See *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990) (citation omitted).
32. The taxpayer “must not only demonstrate that it owns, occupies, and uses its property for a charitable purpose, but also that the charitable purpose is the “predominant use.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014. The “predominant use” test was adopted by the legislature and must be satisfied for a property to qualify for an exemption under Indiana Code § 6-1.1-10. *New Castle Lodge #147*, 765 N.E.2d at 1259. The “predominant use” test is found in Indiana Code § 6-1.1-36.3, which provides in relevant part:

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.

...

(c) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(3) Property that is predominantly used or occupied for [charitable purposes] ...is exempt...from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for [charitable purposes]...during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

33. “The evaluation of whether property is owned, occupied, and predominantly used for an exempt purpose is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009) (citation omitted). “Thus, each and every exemption case ‘stand[s] on its own facts’ and, ultimately, how the parties present those facts.” *Id.*

34. Petitioner is an Indiana non-profit corporation that was organized for charitable purposes as described in Section 501(c)(3) of the Internal Revenue Code. In addition, Petitioner is certified as a CMHC by the State of Indiana’s Family and Social Services Administration.

35. From the subject property, Petitioner administers a comprehensive set of programs and services that benefit mentally disabled and addicted individuals, their families, and the community as a whole. These programs and services include, but are not limited to, the following:

- the provision of medical and psychiatric services;
- chronic mental health and addiction services to children and adults;
- life skill case management services;
- various consultation and education services;
- twenty-four hour emergency care;
- services with regard to abuse and neglect; and

- marriage and family therapy, among others.
36. Petitioner contends that its treatment of those it serves clearly falls within the intent of the charitable purpose definition. It contends that the alleviation of suffering and the care of the sick are precisely the types of activities for which the exemption was intended.
  37. Petitioner contends that two cases support the fact that a CMHC is tax exempt. In *Otis R. Bowen Center for Human Services, Inc. v. Elkhart County Assessor*, Ind. Bd. of Tax Review pet.# 20-011-08-2-8-00001(Jan. 2011), there was no dispute that a CMHC was exempt. The issue in that case, rather, was that the property was not being used on the assessment date.
  38. In *Trinity Episcopal Church, Health and Hospital Corp. of Marion County, d/b/a/ Midtown Community Mental Health Center v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816 (Ind. Tax Ct. 1998), the church was preparing a building for use as a CMHC, but it ended up being vacant on the assessment date. The vacancy was the issue, not the exempt status of the CMHC. The court stated that vacancy did not obviate the purpose for which the church owned, occupied, and used the building, and that purpose was to serve the mental health needs of Marion County. Again, it was undisputed that the activities of a CMHC constituted an exempt purpose.
  39. Petitioner contends that a CMHC is a public agency because it receives government subsidies and is subject to audit by the Indiana State Board of Accounts. The Indiana Attorney General issued a letter stating that a CMHC is a public agency because it must be certified by the Division of Mental Health (“DMH”) and the General Assembly appropriates funds to the DMH to pay the “state’s share of the cost of acquiring sites for constructing, remodeling, equipping, or operating community mental health centers.” In addition, counties are obliged to fund the operation of CMHCs pursuant to Ind. Code § 12-29-2-7. Further, an entity subject to examination by the State Board of Accounts is defined as, “any provider of goods, services, or other benefits that is (1) maintained in whole or in part at public expense; or (2) supported in whole or part by appropriations or public funds or by taxation.” Ind. Code § 5-11-1-16(e).

40. Respondent does not dispute that Petitioner is a 501(c)(3) organization or that, as a CMHC, it provided mental health services, among others, to the community. However, Respondent argues that Petitioner’s status as a 501(c)(3) and the provision of mental health services are not sufficient in and of themselves to warrant an exemption. According to Respondent, it is necessary to show there is a genuine charitable function in the sense of operating at less than market rates.
41. Respondent argues current case law supports its contention. In *Tipton County Health Care*, the court ruled that “good and noble deeds alone do not satisfy the requirements for a charitable purposes exemption from property taxes.” *Tipton County Health Care* at 1048. In that case, the issue revolved around the lack of unity of ownership and occupancy. The court noted that, where different entities own, use, and occupy a property, each is required to show its own charitable purpose. That principle is not at issue in this case. There is no argument that Petitioner owns, uses, and occupies the property at issue.
42. According to Respondent, the *Housing Partnerships* case also supports denial of the exemption. In that case, the court said that “more than just good deeds and a nonprofit status” are needed to support a charitable exemption. The court also looked more closely at compensation received by the taxpayer, finding that the taxpayer was “not relieving a government burden because the government was providing subsidies and financial assistance to them.” *Housing Partnerships* at 1064. The taxpayer in *Housing Partnerships* provided low-income housing, which is not per se a charitable purpose. Further, in that case, the taxpayer failed to provide probative evidence that the property was owned, used, and occupied for an exempt purpose.
43. Respondent contends that Petitioner relies on services funded by the local property tax base including courts, fire, police, ambulance service, and infrastructure. To say that an entity should be denied an exemption because it uses county services is not logical. If such were the case, there would be very few property tax exemptions because

government entities, schools, hospitals, churches, and libraries all avail themselves of those same services.

44. Respondent contends Petitioner is compensated for its services by patients and through substantial government payments. According to Respondent, Petitioner is not relieving a governmental burden because the government provides subsidies and grants to Petitioner to provide those services. Petitioner does receive governmental assistance, but it is also assisting in fulfilling an essential governmental obligation to provide mental health services. Petitioner purchased and maintains the building. They oversee the staffing of the center and the provision of services to the mentally ill, emotionally disturbed, addicted, and elderly. The provision of the services also alleviates pressure that would otherwise fall on local law enforcement and correctional resources, among others. These are burdens the government would have to address at likely a considerably higher cost.
45. For the reasons described herein, the Board finds Petitioner's designation as a CMHC and the provision of its services thereunder establish that the use of the subject property were for a charitable purpose. However, Petitioner must also show that its use of the facility satisfied the "predominant use" test.
46. While Petitioner claimed 100% of the subject property should be exempt on its Form 136, in its Memorandum of Law, Petitioner conceded that the portion of the subject property leased to Northwest Indiana Eye and Laser was not eligible for an exemption. Specifically, Petitioner utilizes approximately 6,648 square feet, or about 81% of the subject property for the provision of its services. The Board accepts Petitioner's concession that the portion of the subject property occupied and used by Northwest Indiana Eye and Laser was not exempt for 2015.
47. Ms. Carlson testified that the portion of the subject property not leased to Northwest Indiana Eye and Laser was used exclusively by Petitioner at all times during the year under appeal. While her statements were somewhat general in nature, Ms. Carlson, as Petitioner's Vice President of Clinical Operations, has direct knowledge of Petitioner's operations, so her testimony carries probative value. Furthermore, Respondent did not

dispute at any time that the portion of the subject property at issue was used in furtherance of Petitioner's services.

48. The Board concludes that the portion of the subject property at issue was entirely used in furtherance of Petitioner's charitable purposes. Consequently, the Board finds that 81% of the subject property is entitled to an exemption for 2015.
49. Indiana Code § 6-1.1-10-16(e) generally extends this exemption to personal property if it is owned and used in an exempt manner. But the record contains no probative facts about the personal property and an exemption cannot be based on speculation about what is being exempted.

#### **FINAL DETERMINATION**

50. The Board finds that Petitioner's real property is entitled to an 81% exemption for 2015. As to personal property, however, Petitioner failed to prove what might qualify for an exemption and that portion of the claim is denied.

This Final Determination of the above captioned matter is issued by the Board on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.